

JASON A. BEZIS
California State Bar No. 225641
3661-B Mosswood Drive
Lafayette, CA 94549-3889
(925) 962-9643 (landline)
(cell)

RECEIVED
FEDERAL ELECTION
COMMISSION

2009 AUG 10 PM 12: 20

OFFICE OF GENERAL
COUNSEL

August 7, 2009

Mr. Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

VIA EXPRESS DELIVERY

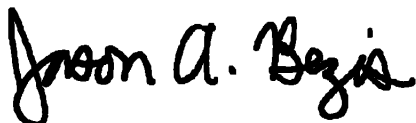
MUR No. 6207 - Amended Complaint Re: Mark DeSaulnier (FEC ID# H0CA10073), et al.

Dear Mr. Jordan:

I am in receipt of your letter dated July 28, 2009. I hereby file a first amended complaint alleging violation of the Federal Election Campaign Act, as amended, and Commission regulations concerning Mark DeSaulnier (FEC ID# H0CA10073), DeSaulnier for Congress (FEC ID# C00460162), Mark DeSaulnier for Senate 2012 (California Secretary of State ID# 1314309), Rita Copeland, treasurer of the aforementioned federal and state campaign committees and Shara J. Perkins, campaign manager of DeSaulnier for Congress. This complaint provides supplementary facts and allegations to the original complaint that I submitted on July 22, 2009.

Enclosed please find an original, notarized first amended complaint along with three copies. Documentation supporting the allegations is included as Exhibits I through K (next in order to exhibits in the original complaint).

Sincerely,



JASON A. BEZIS
Complainant
California State Bar No. 225641

Enclosures: First Amended Complaint (12 pp.) and Exhibits I through K (3 pp.).

10044280166

RECEIVED
FEDERAL ELECTION
COMMISSION

JASON ADRIAN BEZIS
California State Bar No. 225641
3661-B Mosswood Drive
Lafayette, CA 94549-3509
Telephone #1: (925) 962-9643 (office)
Telephone #2: () (cell)
Complainant

2009 AUG 10 PM 12:20

OFFICE OF GENERAL
COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION
UNITED STATES OF AMERICA

JASON ADRIAN BEZIS, Esq.

Complainant,

vs.

MARK DESAULNIER (FEC ID# H0CA10073); DESAULNIER FOR CONGRESS (FEC ID# C00460162); MARK DESAULNIER FOR SENATE 2012 (California Secretary of State ID# 1314309); RITA COPELAND (in her capacities as Treasurer of DeSaulnier for Congress and Treasurer of Mark DeSaulnier for Senate 2012); SHARA J. PERKINS (in her capacity as campaign manager of DeSaulnier for Congress); DOES 1-10.

Respondents.

Matter Under Review (MUR) No. 6207

FIRST AMENDED COMPLAINT RE:

Circumvention of Federal Election Campaign Act, as Amended, and Related Regulations Through:

- (1) Violation of Source Prohibitions (Acceptance of Corporation and Labor Organization Contributions),
- (2) Violation of Amount Limitations,
- (3) Expenditure of State Campaign Committee Funds for Federal Election Activity (via Mass Mailings) and
- (4) Failure to Report Coordinated Communications.

Now comes Complainant JASON A. BEZIS, Esq. and amends and re-states his complaint concerning the above-entitled matter, to provide supplementary information as follows:

1. Additional Respondent SHARA J. PERKINS, 4229-60th Street, Sacramento, California 95820, is campaign manager and an officer and/or employee of DeSaulnier for Congress.
2. **Facts:** On or about July 15, 2009, DeSaulnier for Congress (FEC Committee ID #: C00460162), hereinafter "DeSaulnier Federal Committee," filed its July 2009 Quarterly Report (Form 3) with the FEC, covering receipts and disbursements from April 1, 2009 to June 30, 2009. This document is hereinafter referred to as "July FEC Filing."

1 3. On or about July 31, 2009, DeSaulnier for Senate 2012 (California Secretary of State ID#
2 1314309), hereinafter "DeSaulnier State Committee," filed a Recipient Campaign Statement
3 (California Fair Political Practices Commission Form 460) covering the period from January 1,
4 2009 to June 30, 2009. The "Date of election" is "06/05/2012". This document is hereinafter
5 referred to as "July FPPC Filing." July FPPC Filing, a 75-page document, is available on the
6 World Wide Web at <http://cal-access.ss.ca.gov/PDFGen/pdfgen.prg?filingid=1438141>.

7 4. "Expenditures Made" from January to June 2009 by DeSaulnier State Committee were
8 \$152,846.70 according to the "Summary Page" of the July FPPC Filing (p. 3). "Total Contri-
9 butions Received" were \$100,786.67. Therefore, DeSaulnier State Committee spent \$52,060.03
10 more than it received during a period three years before the stated June 5, 2012 election date.
11 Said period coincided in part with Respondent Mark DeSaulnier's campaign for federal office.

12 5. Respondent Mark DeSaulnier became a "candidate" for "federal office" on March 26,
13 2009 when he submitted his Statement of Candidacy (FEC Form 2) for the office of U.S. House
14 of Representatives (attached as Exhibit I). He also submitted his Statement of Organization
15 (FEC Form 1) on March 26, 2009 (Exhibit B). In the alternative, Respondent Mark DeSaulnier
16 became a "candidate" for federal office on April 16, 2009. By that date, he had received federal
17 contributions aggregating in excess of \$5,000 and otherwise became a "candidate" by operation
18 of law. 11 CFR 100.3(a)(1).

19 6. Schedule A of July FPPC Filing includes "Monetary Contributions Received" by
20 DeSaulnier State Committee. After Respondents filed the Statement of Candidacy and
21 Statement of Organization with the FEC on March 26, 2009, DeSaulnier State Committee
22 received five contributions from five sources not permitted to contribute to federal election
23 campaigns. Four of the five were from entities that Complainant believes are corporations:

- 24 a. "\$1000.00" from "AT&T Inc. and its Affiliates" on "4/9/2009" (page 5),
 - 25 b. "\$1000.00" from "BNSF Railway Company" on "5/18/2009" (page 6),
 - 26 c. "\$1000.00" from "Chevron Corporation" on "6/8/2009" (page 11),
 - 27 d. "\$1000.00" from "Oracle USA, Inc." on "5/1/2009" (page 24).
- 28

1 The fifth contribution was "\$1,000.00" from "Insurance Brokers and Agents Candidate PAC",
2 which complainant believes to be a state-qualified political action committee, on "4/20/2009"
3 (page 19). Said "PAC" apparently is not registered with the FEC as a federal committee.

4 7. Schedule A of July FPPC Filing includes "Monetary Contributions Received" by
5 DeSaulnier State Committee from numerous entities that Complainant believes are labor unions:

- 6 a. "\$1,000.00" from "California Association of Highway Patrolmen" on "3/3/2009"
7 (page 8),
- 8 b. "\$1000.00" from "Professional Engineers in California Government (PECG)" on
9 "3/2/2009" (page 25) and
- 10 c. "\$350.00" from "Teamsters Local Union No. 315" on "1/30/2009" (page 29).

11 While these contributions do not violate California law and while they pre-date the formation of
12 the DeSaulnier for Congress committee, they are impermissible contributions in a federal
13 campaign and the use of such contributions for federal election purposes would violate the law.

14 8. Schedule E of July FPPC Filing includes "Payments Made" by DeSaulnier State
15 Committee to the following entity:

- 16 a. "Shallman Communications Encino, CA 91436" for "LIT" ("campaign literature
17 and mailings") with an "Amount Paid" of "\$51,885.20" (page 51) and
- 18 b. "Shallman Communications Encino, CA 91436" for "POS" ("postage, delivery
19 and messenger services") with an "Amount Paid" of "\$30,016.15" (page 52).

20 9. The California Secretary of State's Cal-Access database (<http://cal-access.ss.ca.gov/>)
21 indicates a date of "06/25/2009" for both of the above expenditures by DeSaulnier State
22 Committee to Shallman Communications.

23 10. "Payments Made" in July FPPC Filing by DeSaulnier State Committee to "Shallman
24 Communications" total to \$81,901.35, approximately 54 percent of the \$152,846.70 in "Total
25 Expenditures Made" by DeSaulnier State Committee from January to June 2009.

26 11. Schedule G of July FPPC Filing includes "Payments Made by an Agent or Independent
27 Contractor (on Behalf of This Committee)" by "Shallman Communications", an "agent or
28 independent contractor," for DeSaulnier State Committee to the following entities:

10044280170

- a. "Anderson Lithograph" for "LIT" ("campaign literature and mailings") with "Amount Paid" of "\$39,600.00" (page 70),
- b. "JB Services" for "POS" ("postage, delivery and messenger services") with "Amount Paid of "\$4,796.83" (page 70) and
- c. "US Postmaster Concord, CA 94520" for "POS" ("postage, delivery and messenger services") with "Amount Paid" of "\$25,219.32" (page 70).

12. Schedule B of July FEC Filing includes "Itemized Disbursements" by DeSaulnier Federal Committee to the following entity: "Shallman Communications, Inc." for "Walk Piece Printing" in an "Amount This Period" of "13390.84" with a "Date of Disbursement" of "06/09/2009".

13. Schedule I of July FPPC Filing includes "Miscellaneous Increases to Cash" transferred from "DeSaulnier for Senate 2008" in the amount of "\$83,348.14" with a "Date Received" of "01/29/2009" (page 73). This is the largest single transaction in July FPPC Filing.

14. Complainant knows and believes from examination of "DeSaulnier for Senate 2008" (California Secretary of State/FPPC ID# 1298900) disclosure reports that the transferred funds may have included corporation, labor organization and other contributions that are not legal in the context of federal election campaign spending. Said committee reported corporate contributions totaling \$17,250.00 from 3M, Comcast Corporation, Corrections Corp of America, Eli Lilly and Company, Foster Interstate Media, Inc., Garaventa Enterprises/S.E.G. Trucking, PB Americas, Inc., PG&E Corporation, Richmond Sanitary Service, Inc., Sempra Energy and The Vanmark Group, Inc. during the October 19, 2008 to December 31, 2008 reporting period alone. Said report is available on the World Wide Web at:

<http://cal-access.ss.ca.gov/PDFGen/pdfgen.prg?filingid=1398642&amendid=0>

15. Schedule E of July FPPC Filing includes "Payments Made" by DeSaulnier State Committee to the following entities for what appear to be election activity after organization of DeSaulnier Federal Committee and statement of federal candidacy on March 26, 2009:

- a. "\$420.26" to "Alliance Graphics, Inc." for "CMP" ("campaign paraphernalia/misc.") and "Bumper Stickers" (page 42). The California Secretary of State's Cal-Access database (<http://cal-access.ss.ca.gov/>) indicates a date of "03/31/2009" for this transaction.

10044280171

- b. "\$1,112.00" to "Jewish News Weekly of Northern California" for "PRT" ("Print Ads")(page 44). The California Secretary of State's Cal-Access database (<http://cal-access.ss.ca.gov/>) indicates a date of "04/15/2009" for this transaction.
- c. "\$750.00" to "Craig Cheslog" for "WEB" ["information technology costs (internet, email)"](page 45). The California Secretary of State's Cal-Access database (<http://cal-access.ss.ca.gov/>) indicates a date of "04/17/2009" for this transaction. Complainant knows and believes that Mr. Cheslog is conducting Respondents' Facebook.com website affairs, among other functions.
- d. "\$200.00" to "California Association for Retired Americans (CARA)" for "PRT" ("print ads")(page 49). The California Secretary of State's Cal-Access database (<http://cal-access.ss.ca.gov/>) indicates a date of "05/27/2009" for this transaction.
- e. "\$150.00" to "Congress of California Seniors" for "PRT" ("print ads")(page 51). The California Secretary of State's Cal-Access database (<http://cal-access.ss.ca.gov/>) indicates a date of "06/30/2009" for this transaction.

16. The California Fair Political Practices Commission does not require state candidates to file the next "Recipient Committee Campaign Statement" until January 31, 2010, covering the period from July to December, 2009. Citizens and the news media therefore will not have access to data concerning any circumvention of Federal Election Campaign Act contribution prohibitions and limitations, coordinated communications and other campaign activities by DeSaulnier State Committee until months after the subject special congressional elections.

17. On or about July 26, 2009, DeSaulnier Federal Committee "released its first TV ad of the congressional race" titled "Get Real," as the campaign announced in a press release. The text of First Mass Mailing by DeSaulnier State Committee is substantially similar to the text of the press release by DeSaulnier Federal Committee announcing the federal campaign's first television advertisement (copy of press release is attached as Exhibit J to this amended complaint).

18. The "Get Real" television advertisement issued by DeSaulnier Federal Committee uses images of President Barack Obama, Vice President Joe Biden and House Speaker Nancy Pelosi at what appears to be a Joint Session of Congress. The content of First Mass Mailing by

1 DeSaulnier State Committee (Exhibit C) is substantially similar to the content of DeSaulnier
2 Federal Committee's first television advertisement entitled "Get Real." (Exhibit J.)

3 19. "Senator Tom Torlakson," whose likeness and quotation appear on the last page of
4 Exhibit C, is presently a member of the California Assembly. Mr. Torlakson previously served
5 two terms as state senator from 2000 to 2008. He is ineligible to be a candidate for the office of
6 California state senator under the legislature term limits provision of the California Constitution
7 (adopted by California voters as Proposition 140 in November 1990). California Constitution,
8 art. 4, sec. 2(a) ("No Senator may serve more than 2 terms.").

9 20. Applicable Law: Under the Federal Election Campaign Act (hereinafter "the Act"), as
10 amended by the Bipartisan Campaign Reform Act of 2002, Federal candidates and officeholders
11 may not raise or spend funds in connection with an election other than an election for Federal
12 office unless those funds comply with the amount limitations and source prohibitions of the Act.
13 "2 U.S.C. 441i(e)(1)(B) and 11 CFR 300.62 require that funds spent by a non-Federal committee
14 controlled by a Federal candidate must consist of donations that comply with the Act's amount
15 limits and source prohibitions." FEC Advisory Opinion 2007-32 (Schock), p. 6.

16 21. "A candidate ... shall not ... receive ... funds in connection with any election other than
17 an election for Federal office or disburse funds in connection with such an election unless the
18 funds ... are not in excess of the amounts permitted with respect to contributions to candidates
19 ... and ... are not from sources prohibited by this Act from making contributions in connection
20 with an election for Federal office." 2 U.S.C. 441i(e)(1). "A person described in 11 CFR 300.60
21 [a federal candidate, et al.] may solicit, receive, direct, transfer, spend, or disburse funds in
22 connection with any non-Federal election, only in amounts and from sources that are consistent
23 with State law, and that do not exceed the Act's *contribution limits* or come from *prohibited*
24 *sources* under the Act." 11 CFR 300.62 (emphasis added).

25 22. Circumvention Allegation No. 1: Respondents Have Violated Source Prohibitions:
26 The Act prohibits corporations and labor organizations from using their general treasury funds to
27 make contributions or expenditures in connection with federal elections. "It is unlawful ... for
28 any *corporation* whatever, or any *labor organization*, to make a contribution or expenditure in
connection with any election at which ... a Senator or *Representative* in, or a Delegate or

1 Resident Commissioner to, Congress are to be voted for ... or for any candidate, political
2 committee, or other person knowingly to *accept or receive* any contribution prohibited by this
3 section." 2 U.S.C. 441b(a). (emphasis added). The prohibition on corporate contributions in
4 connection with federal elections stems from a 102-year old statute, the Tillman Act of 1907,
5 advocated and signed by President Theodore Roosevelt. The Smith-Connally Act of 1943
6 similarly barred labor unions from contributing to federal candidates.

7 23. Respondents are circumventing the source prohibitions of the Act by receiving corporate
8 and labor organization contributions through DeSaulnier State Committee. As discussed above,
9 four of the five contributions that DeSaulnier State Committee received after filing his Federal
10 Committee Statement of Organization on March 26, 2009 were from corporations (AT&T Inc.
11 and its Affiliates; BNSF Railway Company; Chevron Corporation; Oracle USA, Inc.). This fact
12 suggests that Respondents are intentionally directing contributors to DeSaulnier Federal
13 Committee and willfully and purposefully accepting or receiving corporate contributions through
14 the DeSaulnier State Committee in knowing violation of the Act.

15 **24. Circumvention Allegation No. 2: Respondents Have Violated Contribution**

16 **Limitations:** Respondents also are circumventing the contribution limitations of the Act.
17 Individuals may contribute a maximum of \$2,400.00 to the special primary election. Two
18 individuals have contributed more than the federal contribution limitations to Respondents.
19 "Louise Clark" contributed \$100.00" on "1/15/2009" and another "\$100.00" on "1/25/2009" to
20 DeSaulnier State Committee (July FPPC Filing, p. 11) and contributed "2400.00" on
21 "05/05/2009" to DeSaulnier Federal Committee (July FEC Filing). Ms. Clark's aggregate
22 contribution, \$2,600, exceeds the amount limitation. "Melody Howe Weintraub" contributed
23 "\$2,500.00" on "1/27/2009" to DeSaulnier State Committee (July FPPC Filing, p. 31) and
24 contributed "1000.00" on "06/22/2009" to DeSaulnier Federal Committee. Ms. Weintraub's
25 aggregate contribution, \$3,500, exceeds the amount limitation.

26 **25. Circumvention Allegation No. 3: Respondents Are Illegally Expending State**

27 **Campaign Funds to Conduct Federal Election Activity:** As outlined in the original
28 complaint, DeSaulnier State Committee is illegally conducting "Federal election activity"
utilizing state campaign funds. Both Federal and State committees made expenditures to

1 Shallman Communications of Encino, California in June 2009 for campaign material printing.
2 Complainant is informed and believes that the \$81,901.35 in expenditures on June 25, 2009 by
3 DeSaulnier State Committee to Shallman Communications was for production and mailing of
4 First Mass Mailing or Second Mass Mailing or both First Mass Mailing and Second Mass
5 Mailing. First Mass Mailing and Second Mass Mailing carried the attribution of being paid for
6 by "DeSaulnier for Senate 2012." Complainant knows through personal knowledge that First
7 Mass Mailing arrived in mailboxes within the congressional district during the week of June 29,
8 2009 and Second Mass Mailing arrived in mailboxes during the week of July 6, 2009.

9 26. There are substantial similarities between a mass mailing issued by DeSaulnier State
10 Campaign (Exhibit C) and a mass mailing issued by DeSaulnier Federal Campaign.
11 Complainant received a full-color, eight-page booklet entitled "Mark DeSaulnier is my choice
12 for Congress" from "Mark DeSaulnier for Congress, FEC ID #C00460162" by U.S. mail on
13 August 5, 2009 (hereinafter "Third Mass Mailing"). The cover of First Mass Mailing (issued by
14 DeSaulnier State Campaign) reads, "'Access to affordable quality health care is a right, not a
15 privilege." Third Mass Mailing (issued by DeSaulnier Federal Campaign) reads "... Mark
16 believes strongly that access to high-quality health care is a right, not a privilege." (p. 7,
17 attached as Exhibit K.) First Mass Mailing includes a photograph of President Obama with Vice
18 President Joe Biden and Speaker of the House Nancy Pelosi at what appears to be a Joint Session
19 of Congress. (Exhibit C, p. 2). An identical photograph, with different cropping, appears in
20 Third Mass Mailing (Exhibit K).

21 27. *Failure to Contain Disclaimer in Printed Box:* Furthermore, Respondent DeSaulnier
22 State Committee failed to comply with the FEC's "Specific requirements for printed
23 communications" when it distributed First and Second Mass Mailings. "[A] disclaimer ... that
24 appears on any printed public communication must comply with all of the following ... The
25 disclaimer must be contained in a printed box set apart from the other contents of the
26 communication." 11 CFR 110.11(e)(2). First and Second Mass Mailings do not have
27 disclaimers that are contained in printed boxes set apart from the other contents of the
28 communications. (See Exhibit C, p. 12; Exhibit D, p. 1.)

1 **28. Circumvention Allegation No. 4: Respondents Failed to Report "Coordinated**
2 **Communications" to FEC:** Many of DeSaulnier State Committee's activities since the filing of
3 federal Statement of Candidacy on March 26, 2009 constitute "coordinated communications"
4 with DeSaulnier Federal Committee that the Federal Committee should have reported to the FEC
5 as an in-kind contribution from the State Committee. 11 CFR 109.21. First and Second Mass
6 Mailings and some or all items in ¶15 *supra* were "coordinated communications."

7 **29.** FEC regulations provide for a three-pronged test to determine whether a communication
8 is coordinated. A communication must satisfy all three prongs of the test to be deemed a
9 coordinated communication: (1) payment, (2) content and (3) conduct. 11 CFR 109.21(a).

10 **30. *Payment Prong:*** First and Second Mass Mailings meet the "payment prong" because they
11 were paid for in whole by DeSaulnier State Committee, a person other than candidate Mark
12 Saulnier, his authorized Federal Committee, or a political party committee. 11 CFR 109.21(a)(1).

13 **31. *Content Prong:*** First and Second Mass Mailings meet the "content prong" because they
14 are public communications that refer to a clearly identified House candidate, Mr. DeSaulnier,
15 and were publicly distributed in the identified candidate's jurisdiction within 90 days of the
16 candidate's special primary election on September 1st. 11 CFR 109.21(c)(4)(i). First and Second
17 Mass Mailings were publicly distributed in late June and/or early July 2009. Complaint ¶¶15, 18.

18 **32. *Conduct Prong:*** First and Second Mass Mailings meet the "conduct prong" because they
19 shared a common vendor with DeSaulnier Federal Committee. As discussed above, Shallman
20 Communications of Encino, California printed campaign material for both DeSaulnier Federal
21 Committee and DeSaulnier State Committee in June 2009. 11 CFR 109.21(d)(4). In the
22 alternative, First and Second Mass Mailings also satisfy the "conduct prong" in that they
23 apparently were communications created, produced, or distributed at the request or suggestion of
24 a candidate, Respondent Mark DeSaulnier, and authorized committee, Respondent DeSaulnier
25 Federal Committee. 11 CFR 109.21(d)(1). As discussed in the original Complaint at ¶5 and
26 ¶31, Federal and State Committees share a common treasurer, Rita Copeland, and a common
27 address, P.O. Box 6066, Concord, CA 94524.

28 **33.** Respondents Mark DeSaulnier and Federal DeSaulnier Committee violated the Act by
failing to report "coordinated communications" by DeSaulnier State Committee in July FEC

1 filing, as an "in-kind contribution" or otherwise. "A payment for a coordinated communication
2 is made for the purpose of influencing a Federal election, and is an in-kind contribution ... to the
3 candidate, authorized committee, or political party committee with whom or which it is
4 coordinated, unless excepted ... and must be reported as an expenditure made by that candidate,
5 authorized committee, or political party committee ... unless excepted." 11 C.F.R. 109.21(b)(1).

6 A candidate or authorized committee with whom or which a communication paid for by another
7 person is coordinated must report the usual and normal value of the communication as an in-kind
8 contribution; it must report the amount of the payment both as a receipt and as an expenditure.

9 11 C.F.R. 109.21(b)(3). July FEC Filing contains no references of any type to DeSaulnier State
10 Committee. July FEC Filing did not report any data related to First and Second Mass Mailings.

11 34. Respondents Mark DeSaulnier and State DeSaulnier Committee violated the Act by
12 failing to report to the FEC "coordinated communications" by DeSaulnier State Committee with
13 DeSaulnier Federal Committee. "A political committee, other than a political party committee,
14 that makes a coordinated communication must report the payment for the communication as a
15 contribution made to the candidate or political party committee with whom or which it was
16 coordinated and as an expenditure." 11 C.F.R. 109.21(b)(3). Complainant believes that State
17 DeSaulnier Committee has failed to file any report whatsoever with the FEC.

18 35. Case Law and FEC Advisory Opinions: In addition to the FEC Advisory Opinions
19 discussed in Complaint, Complainant has identified additional Advisory Opinions that support
20 his arguments that Respondents have grossly violated the Act. These opinions elucidate the
21 meaning of laws concerning simultaneous congressional and state/local campaigns, especially 2
22 U.S.C. 441i(e).

23 36. FEC Advisory Opinion No. 2005-12 (Fattah) concerns U.S. Representative Chaka Fattah
24 who sought to establish an exploratory committee to run for Philadelphia mayor in 2007
25 simultaneously with his re-election campaign to Congress in 2006. Representative Fattah stated
26 that the funds for his mayoral exploratory committee would be raised and spent "exclusively in
27 connection with his potential candidacy for mayor and would not, in any way, be used in
28 connection with any candidacy for Federal office" nor used "in any way to influence any election
other than that of Representative Fattah's potential candidacy for mayor of Philadelphia." The

10044280177

1 FEC responded, "Representative Fattah and his exploratory committee may raise and spend
2 funds in excess of the amount limits contained in the Act exclusively in connection with his
3 candidacy for mayor of Philadelphia, so long as their activities refer only to Representative
4 Fattah as a candidate for mayor of Philadelphia, to other candidates for that same office, or both,
5 and so long as the amounts and sources of the funds are consistent with State law." (p. 3).

6 37. Unlike Mr. Fattah, Mr. DeSaulnier has raised and spent state/local campaign funds in
7 connection with his candidacy for Congress. Mr. DeSaulnier's spending is not "exclusively" or
8 "solely" in connection with his candidacy for state senate. Whereas Mr. DeSaulnier's next state
9 senate election is three years hence in 2012, DeSaulnier State Committee issued the First and
10 Second Mass Mailings within sixty-five days before his congressional election. Mr. De-
11 Saulnier's campaign activities using state campaign funds do not "refer only" to Mr. DeSaulnier
12 as a candidate for state senator or to other candidates for the same office. DeSaulnier State
13 Committee has funded campaign material that refers to "Tom Torlakson," a state Assemblyman
14 who is now a candidate for the office of State Superintendent of Public Instruction (Exhibit C,
15 p. 12). As discussed in ¶19 *supra*, Assemblyman Torlakson is ineligible under the California
16 Constitution to seek the office of state senator. See also A.O. 2005-05 (LaHood).

17 38. FEC Advisory Opinion No. 2007-26 (Schock) concerns then-Illinois State Representative
18 Aaron Schock who decided to end his state re-election campaign in order to seek a U.S. House
19 seat. The Commission concluded, "[u]nlike other sections of BCRA specifically dependent
20 upon the appearance of a Federal candidate on the ballot," section 441i(e)(1)(B) applies to a
21 Federal candidate at any time, regardless of whether any Federal candidate appears on the
22 ballot." (p. 4.) The strictures of section 441i(e)(1)(B) thus apply to Respondents at all times after
23 Respondent Mark DeSaulnier stated his federal candidacy on March 26, 2009. Therefore, First
24 and Second Mass Mailings were "Federal election activity" that could not be paid for with state
25 campaign funds unless the exceptions under 2 U.S.C. 441i(e)(2) apply. The 441i(e)(2)
26 exceptions do not apply to First and Second Mass Mailings because Mr. DeSaulnier and his
27 agents did not produce them "solely in connection with such election for State or local office"
28 three years later in 2012, but rather for his imminent congressional elections. (Emphasis added.)

10044280178

39. FEC Advisory Opinion No. 2009-06 (Risch) concerns U.S. Senator James Risch, who had remaining debt from previous campaigns for Lieutenant Governor of Idaho. The FEC allowed his State committee and its agents to solicit, receive, and spend funds that exceed the amount limits contained in the Act and from sources prohibited by the Act for the *sole* purpose of retiring debts from his previous campaigns for State office. Consistent with the 2 U.S.C. 441i(e)(2) requirement that "solicitation, receipt, or spending of funds ... refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both," the FEC placed the condition that "the Committee's fundraising solicitations refer only to James E. Risch, to one or more of his former opponents in the campaign for Lieutenant Governor of Idaho, or both." (p. 3.) For this reason, the references to Assemblyman Tom Torlakson in First Mass Mailing (Exhibit C) immediately render illegal the expenditure of state campaign funds on it. As discussed in ¶19 *supra*, the California Constitution forbids Mr. Torlakson from being a candidate for the office of state senator. See also A.O. 2007-1 (McCaskill).

I affirm under penalty of perjury that the foregoing, to the best of my knowledge, is true and correct.

Date: August 7, 2009

Respectfully submitted,

Jason A. Bezis

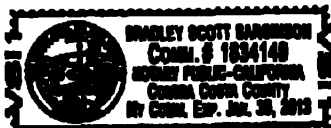
JASON A. BEZIS
California State Bar No. 225641
3661-B Mosswood Drive
Lafayette, CA 94549-3509

CERTIFICATION 63 7th

SIGNED AND SWORN TO BEFORE ME THIS 6th DAY OF AUGUST, 2009



Notary Public



FEC FORM 2

STATEMENT OF CANDIDACY

RECEIVED
FEDERAL ELECTION
COMMISSION
PUBLIC DISCLOSURE

70A MAR 27 P 1:51

1. (a) Name of Candidate (in full) Mark DeRubeis		2. Registration Number
(b) Address (number and street) 3053 Galvin Street		
(c) City, State, and ZIP Code Camden, CA 94520		3. In This Statement <input checked="" type="checkbox"/> New (N) OR <input type="checkbox"/> Amended (A)
4. Party/Affiliation Democratic Party	5. Office Sought House	6. State & District of Candidate CA 10

DESIGNATION OF PRINCIPAL CAMPAIGN COMMITTEE

7. I hereby designate the following named political committee as my Principal Campaign Committee for the _____ election(s).
(year of election)

NOTE: This designation should be filed with the appropriate office listed in the instructions.

(a) Name of Committee (in full)
DeRubeis For Congress

(b) Address (number and street)
3429 Madison Avenue

(c) City, State, and ZIP Code
Sacramento, CA 95841

DESIGNATION OF OTHER AUTHORIZED COMMITTEES

(Including Joint Fundraising Representatives)

8. I hereby authorize the following named committee, which is NOT my principal campaign committee, to receive and expend funds on behalf of my candidacy.

NOTE: This designation should be filed with the principal campaign committee.

(a) Name of Committee (in full)

(b) Address (number and street)

(c) City, State, and ZIP Code

DECLARATION OF INTENT TO EXPEND PERSONAL FUNDS (House or Senate Only)

9. I intend to expend personal funds exceeding the threshold amount (see 11 C.F.R. 401.2) by

for the primary election, and	<input type="text" value="0.00"/>
for the general election.	<input type="text" value="0.00"/>

If you do not intend to expend personal funds exceeding the threshold amount for either election, you must enter "0.00" for each.

I certify that I have examined this statement and to the best of my knowledge and belief it is true, correct and complete.

Signature of Candidate **Mark DeRubeis** Date **03/26/2009**

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to penalties of 2 U.S.C. §437g.

--	--	--	--	--	--	--	--	--


FE-2008-001

FED FORM 2 (PUB. DISCLOS.)


Exhibit

10044280179
200300000691

10044280180



CONTRIBUTE



VOLUNTEER

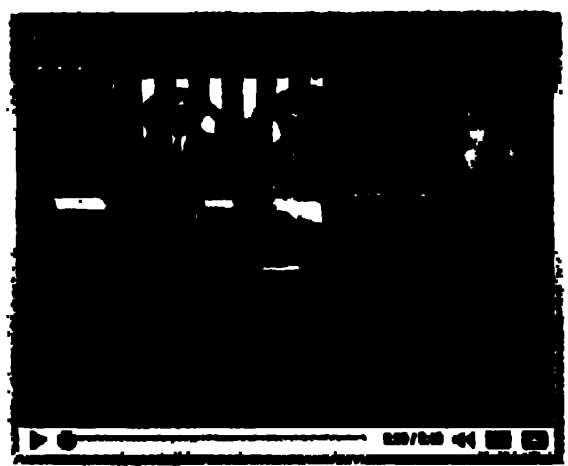
First Name

Last Name

Email

[HOME](#) [ABOUT MARK](#) [NEWS](#) [EVENTS](#) [GET INVOLVED](#) [ENDORSEMENTS](#) [CONTACT](#)

Mark Launches First TV Ad of Congressional Campaign



DeSaulnier pledges to fight special interests and work with President Obama to pass universal health care

WALNUT CREEK - The Mark DeSaulnier for Congress campaign released its first TV ad of the congressional race today. The ad touts DeSaulnier's focus on passing universal health care when he is in Congress, making health care more affordable and accessible for all Americans. DeSaulnier is the first candidate in the congressional race to go up on television.

"As special interests spend millions of dollars trying to derail President Obama's health care reform this summer, I am campaigning on fighting these special interests and working with President Obama to pass health care reform when I am in Congress," said DeSaulnier. "I have spent my career working to increase access to health care services for the residents of the 10th Congressional District, and I will continue that work in Washington D.C."

DeSaulnier has a long record of working to increase access to quality health care. As a county supervisor, he introduced a women's health program that included the construction of five new Women's Health Centers to serve the health care needs of all women. He was also the deciding vote to save the county hospital when it was threatened with closure that would have denied thousands of residents access to health care. In the legislature, he co-authored bills to establish a single-payer health care system in California and to expand coverage for all Californians. In addition, he served as a member of the Speaker's Health Care Reform Working Group and introduced 10 health related bills in topics ranging from smoking to drug abuse to disease prevention.

The script of the ad "Get Real" is as follows:

Narrator:

Health care for all. It's time to get real.
Mark DeSaulnier is running for Congress to make health care affordable for everyone.
He'll work with President Obama to hold down medical costs.
No higher rates for pre-existing conditions and lower rates for small business and individuals.
Mark DeSaulnier - a leader on health care in the state legislature.
Ready to do what's right.

The ad starts running tomorrow on cable television throughout the 10th congressional district. DeSaulnier, a Democrat, has been endorsed by former Congresswoman Ellen Tauscher, Congressman George Miller, Assemblyman Tom Torlakson, and over a dozen local labor unions and over two dozen local elected officials.

DeSaulnier is a candidate for former Congresswoman Ellen Tauscher's seat in the 10th Congressional District. Tauscher retired from Congress in June.



SPREAD THE WORD

SOCIAL NETWORKS





WHAT'S NEW

Track Your Stimulus Dollars
Track your stimulus dollars with this online archive of local stimulus projects.
[click here for details](#)

Local Democrats Overwhelmingly Support Mark for Congress
California Democratic Party members cast their ballots at a recent endorsement caucus -- over 92% support Mark.
[click here for details](#)

News



IN THE NEWS

Health Care Reform: It's Time
Congressman George Miller and Senator DeSaulnier call for a robust public insurance option.
[click here for details](#)

Mark works for real reform in California
Sen. DeSaulnier supports a constitutional convention that could address some of the fundamental reforms needed to get California back on track...
[click here for details](#)



UPCOMING EVENTS

Early Drop-In Phone Banking
Walnut Creek
10:00 AM - 5:00 PM
2014 N. Main St.
[click here for details](#)

Early Evening Phone Banking for Mark (Sat. weekends)
Walnut Creek
4:00 PM - 9:00 PM
2014 N. Main St.
[click here for details](#)

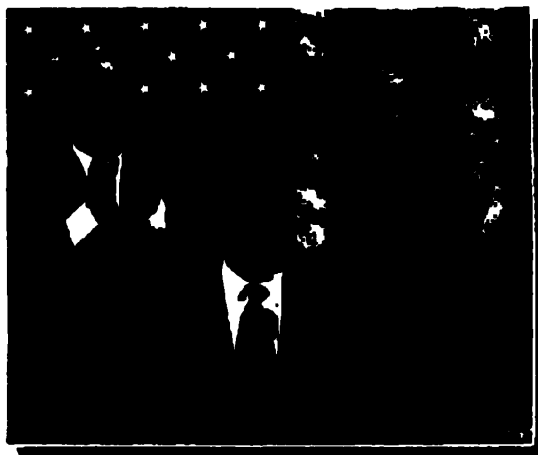
Early Walk for Mark
Sat. 7-10 AM
[click here for details](#)



Up For Health Care Reform

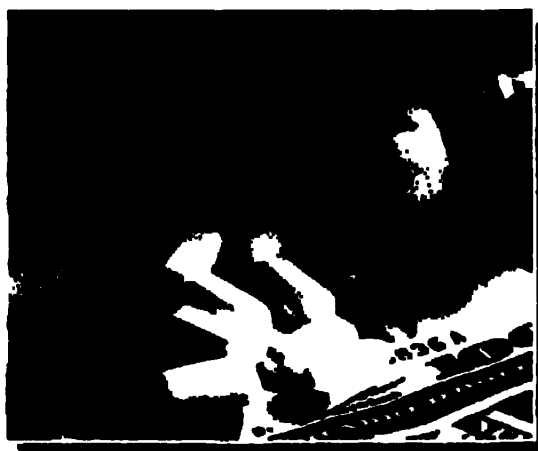
Universal Healthcare Now

Mark DeSaulnier will help President Obama finally pass real health care reform that works for people and not for the insurance and drug companies. He will stand up for universal health care for every American, because Mark believes strongly that access to high-quality health care is a right, not a privilege.



Lower Prescription Drug Costs

Mark DeSaulnier believes drug companies that spend billions of dollars in television advertising can afford to reduce their prices for average Americans. That's why real health care reform must include lowering costs for prescription drugs.



Local Doctors & Nurses Support Mark DeSaulnier

"**Mark DeSaulnier** will fight for health care reform with a true public option – that doesn't compromise the quality of medical care we provide, emphasizes preventive care, and provides real competition to insurance companies to keep costs down."

– William Swenson/Nina Soeganda



Exhibit
K

For information or to volunteer, please visit www.markdesaulnierforcongress.com